



## 93RD GENERAL ASSEMBLY

### State of Illinois

### 2003 and 2004

Introduced 2/6/2004, by Chris Lauzen

#### SYNOPSIS AS INTRODUCED:

815 ILCS 380/2	from Ch. 121 1/2, par. 1202
815 ILCS 380/3	from Ch. 121 1/2, par. 1203
815 ILCS 380/4	from Ch. 121 1/2, par. 1204
815 ILCS 380/5	from Ch. 121 1/2, par. 1205
815 ILCS 380/6	from Ch. 121 1/2, par. 1206
815 ILCS 380/9 new	

Amends the New Vehicle Buyer Protection Act. Provides that "statutory warranty period" means the period of one year or the expiration of the warranty (instead of 12,000 miles). Deletes language providing that collateral charges does not include taxes paid by the purchaser on the initial purchase of the new vehicle. Provides that where the same nonconformity has been subject to repair by the seller, its agent or authorized dealers during the statutory warranty period 4 times (instead of 4 or more times) or the vehicle has been out of service for a total of 30 days (instead of 30 business days), a presumption that a reasonable number of attempts have been undertaken to conform a new vehicle to its express warranties shall arise. Provides that a reasonable allowance for consumer use of a vehicle is that amount equal to the miles driven before the nonconformity is first reported to the motor vehicle dealer, divided by 100,000, multiplied by the purchase price of the vehicle (instead of that directly attributable to the wear and tear incurred on the new vehicle). Provides that an informal settlement procedure shall be optional (rather than mandatory) and the decision of such procedure is inadmissible in civil action. Provides that the Act shall not limit a consumer's rights or remedies available under any other law and a waiver of the rights under the Act by the consumer is void. Increases the statute of limitations for any actions commenced under the Act from 18 months to 3 years. Provides for payment of attorney's fees by the manufacturer to a prevailing consumer. Effective immediately.

LRB093 20638 RXD 46479 b

1 AN ACT concerning business transactions.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The New Vehicle Buyer Protection Act is amended  
5 by changing Sections 2, 3, 4, 5, and 6 and adding Section 9 as  
6 follows:

7 (815 ILCS 380/2) (from Ch. 121 1/2, par. 1202)

8 Sec. 2. Definitions. For the purposes of this Act, the  
9 following words have the meanings ascribed to them in this  
10 Section.

11 (a) "Consumer" means an individual who purchases or leases  
12 for a period of at least one year a new vehicle from the seller  
13 for the purposes of transporting himself and others, as well as  
14 their personal property, for primarily personal, household or  
15 family purposes.

16 (b) "Express warranty" has the same meaning, for the  
17 purposes of this Act, as it has for the purposes of the Uniform  
18 Commercial Code.

19 (c) "New vehicle" means a passenger car, as defined in  
20 Section 1-157 of The Illinois Vehicle Code, a motor vehicle of  
21 the Second Division having a weight of under 8,000 pounds, as  
22 defined in Section 1-146 of that Code, and a recreational  
23 vehicle, except for a camping trailer or travel trailer that  
24 does not qualify under the definition of a used motor vehicle,  
25 as set forth in Section 1-216 of that Code.

26 (d) "Nonconformity" refers to a new vehicle's failure to  
27 conform to all express warranties applicable to such vehicle,  
28 which failure substantially impairs the use, market value or  
29 safety of that vehicle.

30 (e) "Seller" means the manufacturer of a new vehicle, that  
31 manufacturer's agent or distributor or that manufacturer's  
32 authorized dealer. "Seller" also means, with respect to a new

1 vehicle which is also a modified vehicle, as defined in Section  
2 1-144.1 of The Illinois Vehicle Code, as now or hereafter  
3 amended, the person who modified the vehicle and that person's  
4 agent or distributor or that person's authorized dealer.  
5 "Seller" also means, with respect to leased new vehicles, the  
6 manufacturer, that manufacturer's agent or distributor or that  
7 manufacturer's dealer, who transfers the right to possession  
8 and use of goods under a lease.

9 (f) "Statutory warranty period" means the period of one  
10 year or the expiration of the warranty ~~12,000 miles~~, whichever  
11 occurs first after the date of the delivery of a new vehicle to  
12 the consumer who purchased or leased it.

13 (g) "Lease cost" includes deposits, fees, taxes, down  
14 payments, periodic payments, and any other amount paid to a  
15 seller by a consumer in connection with the lease of a new  
16 vehicle.

17 (Source: P.A. 89-375, eff. 8-18-95.)

18 (815 ILCS 380/3) (from Ch. 121 1/2, par. 1203)

19 Sec. 3. Failure of vehicle to conform; remedies;  
20 presumptions.

21 (a) If after a reasonable number of attempts the seller is  
22 unable to conform the new vehicle to any of its applicable  
23 express warranties, the manufacturer shall either provide the  
24 consumer with a new vehicle of like model line, if available,  
25 or otherwise a comparable motor vehicle as a replacement, or  
26 accept the return of the vehicle from the consumer and refund  
27 to the consumer the full purchase price or lease cost of the  
28 new vehicle, including all collateral charges, less a  
29 reasonable allowance for consumer use of the vehicle. ~~For~~  
30 ~~purposes of this Section, "collateral charges" does not include~~  
31 ~~taxes paid by the purchaser on the initial purchase of the new~~  
32 ~~vehicle.~~ The retailer who initially sold the vehicle may file a  
33 claim for credit for taxes paid pursuant to the terms of  
34 Sections 6, 6a, 6b, and 6c of the Retailers' Occupation Tax  
35 Act. Should the vehicle be converted, modified or altered in a

1 way other than the manufacturer's original design, the party  
2 which performed the conversion or modification shall be liable  
3 under the provisions of this Act, provided the part or parts  
4 causing the vehicle not to perform according to its warranty  
5 were altered or modified.

6 (b) A presumption that a reasonable number of attempts have  
7 been undertaken to conform a new vehicle to its express  
8 warranties shall arise where, within the statutory warranty  
9 period,

10 (1) the same nonconformity has been subject to repair  
11 by the seller, its agents or authorized dealers during the  
12 statutory warranty period, 4 ~~or more~~ times, and such  
13 nonconformity continues to exist; or

14 (2) the vehicle has been out of service by reason of  
15 repair of nonconformities for a total of 30 or more  
16 ~~business~~ days during the statutory warranty period.

17 (c) A reasonable allowance for consumer use of a vehicle is  
18 that amount equal to the miles driven before the nonconformity  
19 is first reported to the motor vehicle dealer, divided by  
20 100,000, multiplied by the purchase price of the vehicle  
21 ~~directly attributable to the wear and tear incurred by the new~~  
22 ~~vehicle as a result of its having been used prior to the first~~  
23 ~~report of a nonconformity to the seller, and during any~~  
24 ~~subsequent period in which it is not out of service by reason~~  
25 ~~of repair.~~

26 (d) The fact that a new vehicle's failure to conform to an  
27 express warranty is the result of abuse, neglect or  
28 unauthorized modifications or alterations is an affirmative  
29 defense to claims brought under this Act.

30 (e) The statutory warranty period of a new vehicle shall be  
31 suspended for any period of time during which repair services  
32 are not available to the consumer because of a war, invasion or  
33 strike, or a fire, flood or other natural disaster.

34 (f) Refunds made pursuant to this Act shall be made to the  
35 consumer, and lien holder if any exists, as their respective  
36 interests appear.

1 (g) For the purposes of this Act, a manufacturer sells a  
2 new vehicle to a consumer when he provides that consumer with a  
3 replacement vehicle pursuant to subsection (a).

4 (h) In no event shall the presumption herein provided apply  
5 against a manufacturer, his agent, distributor or dealer unless  
6 the manufacturer has received prior direct written  
7 notification from or on behalf of the consumer, and has an  
8 opportunity to correct the alleged defect.

9 (Source: P.A. 89-359, eff. 8-17-95; 89-375, eff. 8-18-95;  
10 89-626, eff. 8-9-96.)

11 (815 ILCS 380/4) (from Ch. 121 1/2, par. 1204)

12 Sec. 4. (a) The consumer shall have the option to resort to  
13 an informal settlement procedure ~~The provisions of subsection~~  
14 ~~(a) of Section 3 shall not apply unless the consumer has first~~  
15 ~~resorted to an informal settlement procedure applicable to~~  
16 ~~disputes to which that subsection would apply~~ where

17 (1) The manufacturer of the new vehicle has established  
18 such a procedure;

19 (2) The procedure conforms:

20 (i) substantially with the provisions of Title 16, Code of  
21 Federal Regulation, Part 703, as from time to time amended, and

22 (ii) to the requirements of subsection (c); and

23 (3) The consumer has received from the seller adequate  
24 written notice of the existence of the procedure.

25 Adequate written notice includes but is not limited to the  
26 incorporation of the informal dispute settlement procedure  
27 into the terms of the written warranty to which the vehicle  
28 does not conform.

29 (b) If the consumer is dissatisfied with the decision  
30 reached in an informal dispute settlement procedure or the  
31 results of such a decision, he may bring a civil action to  
32 enforce his rights under subsection (a) of Section 3. ~~The~~  
33 ~~decision reached in the informal dispute settlement procedure~~  
34 ~~is admissible in such a civil action.~~ The period of limitations  
35 for a civil action to enforce a consumer's rights or remedies

1 under subsection (a) of Section 3 shall be extended for a  
2 period equal to the number of days the subject matter of the  
3 civil action was pending in the informal dispute settlement  
4 procedure.

5 (c) A disclosure of the decision in an informal dispute  
6 settlement procedure shall include notice to the consumer of  
7 the provisions of subsection (b).

8 (Source: P.A. 85-1350.)

9 (815 ILCS 380/5) (from Ch. 121 1/2, par. 1205)

10 Sec. 5. This Section does not limit rights or remedies  
11 available to a consumer under any other law. ~~Persons electing~~  
12 ~~to proceed and settle under this Act shall be barred from a~~  
13 ~~separate cause of action under the Uniform Commercial Code.~~

14 (Source: P.A. 85-1350.)

15 (815 ILCS 380/6) (from Ch. 121 1/2, par. 1206)

16 Sec. 6. Any action brought under this Act shall be  
17 commenced within 3 years ~~eighteen months~~ following the date of  
18 original delivery of the motor vehicle to the consumer. Any  
19 waiver of the rights under this Act by the consumer is void.

20 (Source: P.A. 83-768.)

21 (815 ILCS 380/9 new)

22 Sec. 9. Attorney's fees. In the event of any controversy,  
23 claim, or action between the parties, arising from any  
24 violation of this Act, the prevailing party will be entitled to  
25 receive from the other party its reasonable attorney's fees and  
26 costs.

27 Section 99. Effective date. This Act takes effect upon  
28 becoming law.